

PUBLIC DOCUMENT

1 BELL SOUTH TELECOMMUNICATIONS, INC.

2 SURREBUTTAL TESTIMONY OF PAMELA A. TIPTON

3 BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

4 DOCKET NO. 2003-326-C

5 MARCH 31, 2004

6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH"), AND YOUR BUSINESS
9 ADDRESS.

10

11 A. My name is Pamela A. Tipton. I am employed by Bell South
12 Telecommunications, Inc., as a Director in the Interconnection Services
13 Department. My business address is 675 West Peachtree Street, Atlanta,
14 Georgia 30375.

15

16 Q. ARE YOU THE SAME PAMELA A. TIPTON WHO FILED DIRECT TESTIMONY
17 IN THIS DOCKET ON JANUARY 29, 2004?

18

19 A. Yes, I am.

20

21 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

22

23 A. I respond to rebuttal testimony filed by AT&T witness Jay Bradbury, CompSouth
24 witness Joe Gillan, MCI witness Dr. Mark Bryant, and Staff witnesses Dr. Robert

1 Loube and Rowland L. Curry. All of these witnesses try to place conditions and
2 limitations on the FCC's self-provisioning trigger rule that simply do not exist.

3
4 **Section 1: Discussion of Trigger Candidate Criteria**

5
6 Q. WITNESSES GILLAN, BRADBURY, BRYANT, CURRY AND LOUBE SUGGEST
7 THE COMMISSION MUST CONSIDER A HOST OF CRITERIA TO "QUALIFY"
8 CLECS AS TRIGGER CANDIDATES BEFORE THEY CAN BE COUNTED.
9 WHAT DO THE FCC RULES STATE?

10
11 A. The criteria for a CLEC to be counted with regard to the self-provisioning
12 switching trigger are clearly set forth in the FCC's Rules. 47 C.F.R. §
13 51.319(d)(2)(iii)(A)(1), Local switching self-provisioning trigger, states:
14 "To satisfy this trigger, a state Commission must find that three or more
15 competing providers not affiliated with each other or the incumbent LEC,
16 including intermodal providers of service comparable in quality to that of
17 the incumbent LEC, each are serving mass market customers in the
18 particular market with the use of their own local switches."

19 The other parties' attempt to include a number of other unique criteria that a
20 trigger "candidate" allegedly must meet is simply wrong. Had the FCC intended
21 for state Commissions to check off a laundry list of criteria before considering a
22 CLEC as a "trigger candidate," the rules would have said so. They do not. The
23 rule contains the only criteria that address the self-provisioning trigger; it is
24 straightforward, and it contains two, and only two, requirements. Competing
25 providers must: 1) not be affiliated with each other or the incumbent LEC, and

1 may include intermodal providers of service comparable in quality to that of the
2 incumbent LEC, and 2) be serving mass market customers in the particular
3 market with the use of their own switch. Unlike what the other parties' witnesses
4 would have this Commission believe, the FCC's discussion regarding the actual
5 self provisioning test, in Section VI.D.6.a.(ii)(b)(ii) of the Order, entitled "Triggers",
6 supports the straight forward and narrowly defined criteria set forth in the FCC's
7 rule. Exhibit PAT-8 is a decision flow chart that accurately represents the trigger
8 analysis as reflected in 47 C.F.R. § 51.319(d)(2)(iii)(A)(1). This is the only
9 decision-making analysis that needs to be conducted in this proceeding in
10 determining where the trigger is met, despite CLEC claims suggesting otherwise.

11
12 Q. HAVE THE CLECS MISSED THE FOCUS OF THE SWITCHING TRIGGER?

13
14 A. Yes. As the FCC explained in its brief filed in the D.C. Circuit in connection with
15 review of the Triennial Review Order, the switching trigger has to do "with
16 determining when market conditions are such that new entrants are not *impaired*
17 in *entering* the market." (Respondent's Brief filed January 16, 2004, p. 46, n. 22).
18 By seeking to impose unnecessary criteria to the trigger analysis, the CLEC
19 witnesses are advocating conditions that focus more on protecting their access to
20 unbundled switching than focusing on conditions that relate to market entry.

21
22 Q. MCI WITNESS BRYANT ATTACHES A FLOW CHART TO HIS TESTIMONY
23 SHOWING A "TRIGGER ANALYSIS" HE HAS DEVISED. SIMILARLY, MR.
24 GILLAN HAS PROVIDED A TABLE SUMMARIZING HIS IMAGINED TRIGGERS

1 CRITERIA. IS EITHER THE FLOW CHART OR TABLE SUPPORTED BY THE
2 FCC RULE?

3

4 A. No, both Dr. Bryant's and Mr. Gillan's proposed trigger criteria go well beyond the
5 straightforward criteria set forth in the FCC's rule.

6

7 Q. DOES THE FCC'S RULE CONTAIN LANGUAGE THAT PRECLUDES
8 CONSIDERATION OF SO-CALLED "ENTERPRISE" SWITCHES AS SEVERAL
9 WITNESSES, INCLUDING MR. GILLAN (CRITERIA #1), SUGGEST?

10

11 A. No.

12

13 Q. DOES THE FCC'S RULE REQUIRE ANY SPECIFIC CRITERIA ABOUT
14 SWITCHES IN THE CONTEXT OF ITS SELF-PROVISIONING TRIGGER
15 ANALYSIS?

16

17 A. No, it does not. In fact, in its Errata, the FCC deliberately removed the only
18 qualifier relating to the switches used in providing mass market service for the
19 trigger analysis when it struck the word "circuit" from its trigger rules. There are
20 no other switch qualifications, no count of switches required, and no restriction on
21 the type of switch used to provide service to mass market customers. The rule
22 simply requires that three or more CLECS are providing service using their own
23 switch.

24

1 Q. WOULD IT MAKE ANY SENSE TO EXCLUDE ANY SWITCH THAT SERVES
2 BOTH "ENTERPRISE" AND MASS-MARKET CUSTOMERS FROM THE
3 TRIGGER ANALYSIS, AS MR. GILLAN ADVOCATES?
4

5 A. No. As BellSouth witness Kathy Blake testifies, within the context of the FCC's
6 Order, an enterprise switch is a switch providing service to enterprise customers
7 through the use of DS1 or above loops (TRO ¶ 441, FN 1354). Where a CLEC is
8 already using its switch to serve customers using DS0 loops, clearly the serving
9 switch already has the capability to serve mass-market customers using DS0
10 loops and thus is not an "enterprise" switch, regardless of how many or few
11 mass-market customers the switch is serving. Such evidence demonstrates that
12 the CLEC has already invested the additional resources needed to provide
13 service to mass market customers. When a CLEC has self-deployed a switch
14 that is serving mass-market customers using DS0 loops as well as "enterprise"
15 customers, the CLEC constitutes a qualified trigger candidate.
16

17 Q. IS THERE ANY REQUIREMENT IN THE APPLICABLE RULE THAT THE SELF-
18 PROVISIONING TRIGGER CANDIDATE MUST BE PROVIDING VOICE
19 SERVICE TO "RESIDENTIAL CUSTOMERS" AS MR. GILLAN (CRITERIA #2),
20 MR. BRADBURY AND OTHERS SUGGEST?
21

22 A. No.
23

24 Q. SEVERAL WITNESSES, INCLUDING DR. BRYANT, MR. GILLAN, MR. CURRY,
25 AND DR. LOUBE ATTEMPT TO DISQUALIFY CLECS AS TRIGGER

1 CANDIDATES ON THE BASIS THAT THEY ARE PROVIDING SERVICE TO
2 BUSINESS CUSTOMERS ONLY. HOW DO YOU RESPOND?

3

4 A. The FCC's rule does not require a competitive LEC to provide service to both
5 residential and business customers in order to qualify as a trigger candidate. If
6 the FCC required trigger candidates to serve residential as well as business
7 customers in a particular market with their own local switches, it would have
8 established this requirement in 47 C.F.R. § 51.319(d)(2)(iii)(A)(1). It did not.
9 Instead, its rule requires that trigger candidates must be serving "mass market"
10 customers in a particular market with their own local switches with no more
11 specificity regarding whether those customers are residential or business
12 customers. To support his argument, Dr. Loube tries to impose a definition on
13 the "group of customers" the FCC references in paragraph 495 of the TRO that
14 simply does not exist. Any suggestion that a particular trigger candidate must
15 serve both residential and small business customers goes beyond the FCC's
16 clearly defined trigger test.

17

18 Q. DOES THE RULE REQUIRE THAT A SELF-PROVISIONING TRIGGER
19 COMPANY RELY ON ILEC ANALOG LOOPS TO CONNECT THE CUSTOMER
20 TO ITS SWITCH AS WITNESS MR. GILLAN (CRITERIA #4), MR. BRADBURY,
21 AND OTHERS CONTEND?

22

23 A. No. The rule explicitly says that intermodal providers of service constitute trigger
24 candidates. In 47 C.F.R. § 51.5, the FCC defined intermodal as follows:

1 “Intermodal. The term intermodal refers to facilities or technologies other
2 than those found in traditional telephone networks, but that are utilized to
3 provide competing services. Intermodal facilities or technologies include,
4 but are not limited to, traditional or new cable plant, wireless technologies,
5 and power line technologies.”
6

7 Q. ARE THERE SPECIFIC REQUIREMENTS THAT APPLY FOR AN
8 INTERMODAL PROVIDER OF SERVICE TO QUALIFY FOR THE SWITCHING
9 TRIGGER (MR. BRADBURY, DR. BRYANT, DR. LOUBE AND MR. GILLAN -
10 CRITERIA #4)?
11

12 A. Only one, which is that the service provided by the intermodal provider must be
13 comparable in quality to the service provided by the ILEC. While Mr. Bradbury
14 and Mr. Gillan do concede that there could be an alternative to ILEC loops, they
15 overstate the specific criteria to be applied to intermodal carriers. Dr. Bryant
16 goes so far as to say cable telephony providers are disqualified as trigger
17 companies because they do not reach all of the ILEC's mass market locations. I
18 strongly disagree with Dr. Bryant's assertion. There is absolutely no indication
19 that the FCC contemplated that the trigger company's actual deployment have
20 exact ubiquity to the ILEC network, whether considering intermodal or traditional
21 providers.
22

23 Q. ON PAGE 15 OF HIS TESTIMONY, DR. LOUBE STATES WHY HE BELIEVES
24 CABLE PROVIDERS SHOULD NOT QUALIFY AS TRIGGER COMPANIES.

1 DID BELLSOUTH RELY ON CABLE PROVIDERS IN ITS TRIGGER
2 ANALYSIS?

3
4 A. No, so Dr. Loube's discussion is not relevant to these proceedings. Nonetheless,
5 I would like to respond to Dr. Loube's assertions. Dr. Loube argues that cable
6 telephony service is not comparable in quality to the service provided by the
7 ILEC because cable providers do not have backup power for their networks. As
8 a result, he alleges, their service would go out when there is a power failure. I
9 disagree. In other states where BellSouth has relied on a cable provider in its
10 trigger analysis, BellSouth has determined that the cable provider has backup
11 power provisions in case of power outage. Dr. Loube goes on to argue that
12 cable providers should be excluded because there is no evidence that cable
13 switches have been or could be connected to the ILEC loops. While the FCC
14 considers this issue in its discussion on operational impairment, the FCC's self-
15 provisioning trigger explicitly includes intermodal carriers (e.g. cable providers) –
16 none of which, by definition, use ILEC loops.

17
18 Q. DOES THE FCC'S SELF-PROVISIONING TRIGGER RULE REQUIRE THAT
19 THE EXISTENCE OF THE CANDIDATE SHOULD BE EVIDENCE OF
20 SUSTAINABLE AND BROAD-SCALE MASS MARKET COMPETITIVE
21 ALTERNATIVES IN THE DESIGNATED MARKET" AS MR. GILLAN (CRITERIA
22 #6), MR. BRADBURY AND DR. BRYANT CLAIM?

23
24 A. No. It bears repeating that the FCC's rule for implementing the self-provisioning
25 trigger contains only two criteria, neither of which is that broad-scale mass

1 market alternatives presently exist. Remarkably, these witnesses appear to have
2 missed that the FCC issued an errata, in which it corrected paragraph 499, and
3 removed the requirement that the self-provisioning switching trigger candidates
4 must be ready and willing to serve *all* retail customers in the market – a
5 deliberate action by the FCC indicating that, contrary to the other witness's
6 assertion, such a requirement is not to be considered in the trigger analysis. To
7 the extent these witnesses are advocating for additional requirements, this
8 Commission should reject such arguments.

9

10 Q. DOES THE FCC'S RULE REQUIRE THAT TRIGGER COMPANIES ACTIVELY
11 SEEK TO SERVE THE MARKET, AS MR. LOUBE CLAIMS?

12

13 A. No. As I have previously discussed, the FCC made it clear that the purpose of
14 the triggers is to determine the markets where entrants are not impaired in
15 *entering* the market. The self-provisioning trigger requires a showing that CLECs
16 are providing service to mass markets customers in a particular market using
17 their own switches. Failing to advertise or failing to add new customers daily
18 using its own switching, particularly when UNE-P is available, proves nothing.
19 The FCC's rule requires only that CLECs are serving mass market customers
20 with their own switches in a particular market.

21

22 Q. MR. CURRY RECOMMENDS THAT THIS COMMISSION ADOPT A DE
23 MINIMUS STANDARD AND DR. LOUBE RECOMMENDS A "THREE
24 PERCENT RULE" TO DETERMINE WHETHER CLECS ARE ACTIVELY
25 SERVING THE MASS MARKET. DOES THE FCC GIVE STATES THE

1 LATITUDE TO ESTABLISH ARBITRARY CRITERIA FOR CLECS TO QUALIFY
2 AS TRIGGER COMPANIES?

3
4 A. No. The states are to follow the FCC's clearly defined test. The FCC delegated
5 to the states a specific set of tasks that it laid out in its rules. There is nothing in
6 the TRO that suggests the FCC intended for the states to apply additional
7 criteria, or to reach beyond the scope of the FCC's straight-forward and clearly
8 defined test. The question the states must answer is: Are CLECs currently
9 serving mass market customers in a particular market from their own switch? If
10 the answer is yes, and there are 3 such unaffiliated providers, the self-
11 provisioning trigger is met. Again, the purpose of the trigger is to demonstrate
12 there is no impairment in *entering* the market. The presence of 3 providers
13 demonstrates the feasibility of entering the market.

14
15 Q. IS THERE ANY REQUIREMENT IN THE FCC'S TRIGGER TEST THAT UNE-L
16 MUST HAVE THE SAME UBIQUITY AS UNE-P BEFORE THE TRIGGER IS
17 MET, AS MESSRS. BRADBURY, GILLAN, CURRY AND LOUBE CLAIM?

18
19 A. Absolutely not. Further, it is clear the FCC ultimately concluded that this would
20 not be a requirement. In its September 2003 Errata, the FCC revised language
21 in paragraph 499 of the TRO and clarified that there is no required demonstration
22 of ubiquity for the self-provisioning trigger (See Paragraph 21 of the Errata).
23 BellSouth witness, Kathy Blake, elaborates further on this in her testimony.

1 Q. ON PAGE 9 OF HIS REBUTTAL TESTIMONY, DR. BRYANT IDENTIFIES
2 FOUR TRIGGER CRITERIA, WHICH HE CHARACTERIZES AS "FCC RULES".
3 DO YOU AGREE?
4

5 A. No. The FCC rule regarding the self-provisioning trigger is set forth in 47 C.F.R.
6 § 51.319(d)(2)(iii)(A)(1). A plain reading of this rule shows that Dr. Bryant's
7 "criteria" are not part of the FCC's rule. As I stated in my direct testimony and
8 above, the FCC rule, supported by the Order's discussion on the trigger analysis,
9 contains two and only two criteria, both of which are met by the trigger
10 candidates identified by BellSouth in this proceeding (§462, ¶ 501). Any attempt
11 to impose additional criteria in order to disqualify these trigger CLECS under the
12 guise of the FCC rules is misguided and should not be endorsed by this
13 Commission.
14

15 Q. DOES THE FCC SET FORTH CRITERIA FOR EXEMPTING CLECS FROM
16 THE SELF-PROVISIONING TRIGGER ANALYSIS, AS DR. LOUBE AND MR.
17 CURRY ALLEGE?
18

19 A. Absolutely not. Mr. Curry goes so far as to allege that CLECs should be
20 precluded from being trigger candidates if they: 1) do not provide service to both
21 small business and residential customers, 2) are intermodal providers or 3) serve
22 no more than an arbitrary, "de minimus" number of lines in a market. For the
23 reasons set forth above, I strongly disagree with Mr. Curry's suggestion that the
24 FCC's rule supports any of these criteria. Needless to say, since Mr. Curry
25 applied the wrong criteria, he reached the wrong conclusion.

1

2

Section 2: Discussion of Trigger Analysis

3

4

5 Q. MR. BRADBURY ARGUES THAT EXHIBIT PAT-1 IS NEITHER ACCURATE
6 RELATIVE TO AT&T OR CLECS IN GENERAL. DO YOU AGREE?

7

8 A. No. Apparently, Mr. Bradbury is forgetting that the source of the data in Exhibit
9 PAT-1 is the Local Exchange Routing Guide ("LERG"). If Mr. Bradbury believes
10 my exhibit is inaccurate as to AT&T, it is inaccurate only to the extent AT&T
11 submitted inaccurate information for the LERG. Furthermore, nowhere in my
12 testimony do I state that Exhibit PAT-1 is a list of switches "deployed in South
13 Carolina", as Mr. Bradbury claims. My testimony clearly states that Exhibit PAT-
14 1 is a "list of CLEC switches which provide service in South Carolina".

15

16 Q. MR. BRADBURY STATES THAT AT&T HAS NO LOCAL SWITCHES IN SOUTH
17 CAROLINA - THAT IT OPERATES ONLY 2 TOLL SWITCHES IN THAT STATE.
18 HE THEN CLAIMS THAT EXHIBIT PAT-1 MISREPRESENTS THE NUMBER OF
19 SWITCHES AT&T IS OPERATING IN THAT STATE? DO YOU AGREE?

20

21 A. No. Let me reiterate that Exhibit PAT-1 is a list of CLEC switches derived from
22 the LERG. In no way does my testimony report or allude to Exhibit PAT-1 as a
23 list of mass market switches. Instead, my testimony explicitly describes the list
24 as switches as those "which provide service in South Carolina." Furthermore,

1 BellSouth did not count AT&T's toll switches as part of its trigger analysis as Mr.
2 Bradbury suggests on pages 3-5 of his rebuttal testimony.

3
4 While Mr. Bradbury alleges that AT&T has no switches dedicated to providing
5 local service in South Carolina, AT&T has offered local service in this state via its
6 4ESS switch. AT&T filed direct testimony in Docket 2000-527-C stating, "AT&T
7 offers local exchange service in South Carolina via 4ESS switches, which
8 function primarily as long distance switches, and 5ESS switches, which act as
9 adjuncts to the 4ESS switches" (Direct Testimony of Gregory Follensbee, page
10 37). The LERG data in my Exhibit PAT-1 is consistent with Mr. Follensbee's
11 testimony. Nonetheless, BellSouth has not counted AT&T as a trigger company.
12 Therefore, Mr. Bradbury's arguments are irrelevant.

13
14 It is important to mention here that, in a news release dated January 8, 2004,
15 AT&T states that it now serves "residential customers across all of BellSouth's
16 nine state territory" (See AT&T News Release at <http://www.att.com/news>
17 item/0,1847,12697,00.html).

18
19 Q. IN ITS DISCOVERY REQUESTS, DID BELL SOUTH ASK THE CLECS TO
20 IDENTIFY THEIR SWITCHES?

21
22 A. Yes. BellSouth asked the CLECs to identify the switches they use to provide
23 qualifying service in South Carolina. Most, if not all, of the CLECs who use a
24 non-ILEC switch to provide qualifying service in South Carolina provided this
25 information to BellSouth. My proprietary Exhibit PAT-9 lists CLEC names and

1 CLLIs for the switches they identified as those that they use to provide qualifying
2 service in South Carolina. This exhibit includes both switches the CLECs own
3 and those they have acquired the right to use.

4
5 Q. SEVERAL WITNESSES, SUCH AS MESSRS. BRADBURY, GILLAN AND
6 OTHERS, ARGUE THAT "ENTERPRISE SWITCHES" SHOULD BE EXCLUDED
7 FROM THE SELF-PROVISIONING TRIGGER ANALYSIS. PLEASE
8 COMMENT.

9
10 A. As discussed above, these witnesses misinterpret the trigger analysis. First,
11 there is no switch qualifier in the FCC's rule or in the Order's discussion in the
12 Triggers section (Section VI.D.6.a.(ii)(b)(ii)). The FCC rule requires no count of
13 switches, other than presumably that each trigger candidate must have its own
14 switch; the rule has no discussion regarding how switches are used to provide
15 mass market service. The only mention of excluding "enterprise switches" is in
16 the "potential deployment" section of the TRO, and not in the portion of the order
17 addressing the triggers. If the FCC had intended any "qualification" of switches
18 to be included as part of the trigger analysis, it would have set forth the
19 requirement in its rule. It did not. The relevant inquiry is whether the competing
20 providers counted towards the trigger are providing mass market service using
21 their own switch(es).

22
23 Q. SHOULD EVIDENCE OF SELF-DEPLOYED SWITCHES SERVING
24 ENTERPRISE CUSTOMERS BE CONSIDERED IN EVALUATING MASS
25 MARKET SWITCHING IMPAIRMENT?

1

2 A. Absolutely. In the “potential deployment” phase of any case looking at
3 impairment, the FCC recognized the significance of such evidence. In its
4 discussion of the “potential deployment” analysis at paragraph 508 of its TRO,
5 the FCC states:

6 “We find the existence of switching serving customers in the *enterprise*
7 market to be a significant indicator of the possibility of serving the mass
8 market because of the demonstrated scale and scope economies of
9 serving numerous customers in a wire center using a single switch...The
10 evidence in the record shows that the cost of providing mass market
11 service is significantly reduced if the necessary facilities are already in
12 place and used to provide other higher revenue services...”

13

14 Q. IN HOW MANY MARKETS IN BELL SOUTH'S SERVING AREAS ARE THERE
15 THREE OR MORE SELF-PROVIDERS OF ENTERPRISE SWITCHING USING
16 DS1 LOOPS?

17

18 A. Based on BellSouth's internal data and CLEC discovery responses, there are 3
19 geographic markets where 3 or more CLECS are serving the enterprise market
20 with their own switches using DS1 loops, which are shown on the attached
21 Exhibit PAT-10. Admittedly, these are the same markets where the self-
22 provisioning trigger is met.

23

24 Q. PLEASE COMMENT ON MR. GILLAN'S CONCLUSIONS CONCERNING
25 BELL SOUTH'S TRIGGER ANALYSIS.

1

2 A. Apparently, Mr. Gillan is drawing conclusions based upon his fabricated trigger
3 analysis criteria and upon certain data he claims relates to a CLEC's presence in
4 the marketplace that does not relate directly to the FCC's test. As I explained in
5 my direct testimony and above, BellSouth's trigger analysis considered CLEC
6 provided data regarding its actual deployment, loop data for business class
7 customers from its loop inventory database, and numbers ported to CLECS
8 (which thus includes lines CLECS serve using their own facilities). BellSouth has
9 diligently attempted to obtain data directly from CLECS to present this
10 Commission with the most accurate information. BellSouth has sought, as much
11 as possible, to rely upon data provided by the CLECS concerning the types of
12 customers served and where such customers are located in analyzing the
13 switching trigger.

14

15 Q. ON PAGES 13 – 14 OF MR BRADBURY'S TESTIMONY, HE DISCUSSES WHY
16 HE BELIEVES IT IS IMPORTANT TO DETERMINE IN WHICH WIRE CENTERS
17 CLECS ARE SERVING CUSTOMERS USING UNE-L. HOW DO YOU
18 RESPOND?

19

20 A. Mr. Bradbury is quick to refer to one of BellSouth's discovery responses that
21 states there are no collocation arrangements in 79 of BellSouth's South Carolina
22 wire centers. He then concludes that there is no facilities based competition in
23 77% of BellSouth's South Carolina wire centers. What Mr. Bradbury fails to
24 mention is there is collocation and facilities-based competition in close to 60% of

1 the wire centers in BellSouth's trigger markets (See BellSouth's Response to
2 MCI/WorldCom's 3rd Set of Interrogatories, Item No. 26).

3

4 Q. ON PAGE 18 OF HIS TESTIMONY, MR. CURRY STATES THAT THE FCC
5 RECOGNIZED THERE MAY BE EXCEPTIONAL CIRCUMSTANCES THAT
6 PRECLUDE A DETERMINATION OF NO IMPAIRMENT EVEN WHEN THE
7 TRIGGER HAS BEEN SATISFIED. DO SUCH EXCEPTIONS EXIST IN SOUTH
8 CAROLINA?

9

10 A. No. Mr. Curry himself acknowledges that no CLECs have presented any specific
11 assertions of exceptional barriers in this proceeding. BellSouth agrees.

12

13 **Section 3: Discussion of Individual Trigger Candidates**

14

15 Q. SEVERAL WITNESSES, INCLUDING BRYANT, GILLAN, BRADBURY, AND
16 CURRY ATTEMPT TO "DISQUALIFY" PARTICULAR (AND IN SOME CASES
17 ALL) CLECS FROM BELL SOUTH'S TRIGGER ANALYSIS BECAUSE THESE
18 CLECS ARE ONLY SERVING CUSTOMERS WITH HIGHER CAPACITY
19 LOOPS OR OVERFLOW LINES. HOW DO YOU RESPOND?

20

21 A. I disagree with their assertions. Despite their claims, BellSouth screened out
22 locations served by DS1 loops so that it did not inadvertently include an
23 enterprise location in its mass market analysis. CLECS self-reported their
24 provision of one to three line service to end users in their discovery responses.
25 For CLECS who refused to respond to discovery, or who otherwise did not

1 provide adequate responses, BellSouth used its own data. BellSouth's internal
2 data was based on DS0 loops and residential ported numbers. I will address
3 specific assertions below.
4

5 Q. ON WHAT DOES DR. BRYANT BASE HIS ARGUMENTS THAT THE TRIGGER
6 COMPANIES IDENTIFIED BY BELL SOUTH SHOULD BE DISQUALIFIED?
7

8 A. Dr. Bryant attempts to disqualify several identified trigger companies simply
9 because they do not serve residential customers. As I mentioned earlier in my
10 testimony, the FCC did not define mass market customers as residential
11 customers, only. It defined "mass market customers" as residential customers
12 and very small business customers.
13

14 To support his conclusion that these CLECs be excluded from BellSouth's trigger
15 analysis, Dr. Bryant attaches pages from BEGIN PROPRIETARY ***

16 *****END PROPRIETARY web sites. Despite Dr.
17 Bryant's claims, BellSouth's analysis, which included BellSouth's internal data
18 and CLEC discovery responses, indicates that each of these CLECs are serving
19 customers with DS0 analog loops. Because these CLECs are serving mass
20 market customers with their own switches in the identified markets, they certainly
21 qualify as trigger companies.
22

23 Q. REGARDING MR. GILLAN'S TESTIMONY ON BEHALF OF COMPSOUTH,
24 SHOULD ANY WEIGHT BE GIVEN TO HIS TESTIMONY CONCERNING
25 QUALIFYING TRIGGER CANDIDATES?

1

2 A. Absolutely not. Beginning on page 26 of his rebuttal testimony, Mr. Gillan makes
 3 certain assertions about specific CLEC trigger candidates and their alleged
 4 failure to serve the mass market segment. To support some of his arguments,
 5 Mr. Gillan attaches to his testimony affidavits not previously filed in this docket
 6 from BEGIN PROPRIETARY * **** *****
 7 *****END PROPRIETARY. In the affidavits, these CLECs state
 8 they should not be considered trigger companies because they are either not
 9 “actively marketing” to these customers or because they consider any DS0 lines
 10 served to be incidental lines. The FCC criteria requires a determination as to
 11 whether CLECs are currently serving mass market customers. Nowhere, in its
 12 trigger test, does the FCC require CLECs to be “actively marketing” to these
 13 customers.

14

15 Ironically, the discovery responses from BEGIN PROPRIETARY **** *****
 16 *****END PROPRIETARY indicates that it is serving mass market
 17 customers. Therefore, this company certainly qualifies as a trigger company.
 18 Furthermore, BEGIN PROPRIETARY *** *****END
 19 PROPRIETARY both acknowledge in their affidavits that they are serving DS0
 20 customers. Furthermore, BellSouth’s internal data shows that BEGIN
 21 PROPRIETARY *** *****END PROPRIETARY have
 22 ordered DS0 analog loops from BellSouth – some even continue to order DS0
 23 loops from BellSouth. The fact that these CLECs are not actively marketing to
 24 DS0 customers is irrelevant. The supplied affidavits are not germane to the
 25 trigger analysis because these carriers are currently serving mass market

1 customers, and that is what is important. If these CLECs are serving DS0
2 customers with their own switches in the identified markets, then they certainly
3 qualify as trigger companies.

4
5 None of the trigger companies identified by BellSouth are affiliated with each
6 other or with BellSouth. Clearly, all of these CLECS qualify as trigger companies
7 pursuant to the FCC's straight-forward, bright line self-provisioning trigger.

8
9 Q. MR. CURRY ARGUES THAT NO TRIGGER COMPANIES MEET THE
10 TRIGGER REQUIREMENTS IN THE MARKETS IDENTIFIED BY BELL SOUTH
11 BECAUSE THEY ARE NOT SERVING BOTH RESIDENTIAL AND BUSINESS
12 CUSTOMERS. HOW DO YOU RESPOND?

13
14 A. I strongly disagree. Mr. Curry argues that BEGIN
15 PROPRIETARY *****END
16 PROPRIETARY should be precluded from being counted as trigger companies
17 for this reason. As I stated earlier in my testimony, there is absolutely no
18 requirement in the TRO that the trigger companies serve both residential and
19 business customers. Rather, the self-provisioning trigger requires that trigger
20 companies are serving "mass market" customers with their switches. Mass
21 market customers can be either residential or very small business customers.

22
23
24 **Section 4: Discussion of Market Definition**

1 Q. ON PAGE 13, COMPSOUTH WITNESS JOE GILLAN RECOMMENDS USING
2 LOCAL ACCESS TRANSPORT AREA ("LATA") AS THE APPROPRIATE
3 MARKET DEFINITION. WHAT IS THE OUTCOME OF BELL SOUTH'S SELF-
4 PROVISIONING TRIGGER ANALYSIS IF LATA WAS THE MARKET
5 DEFINITION?

6

7 A. Using this definition would also result in 3 markets satisfying the triggers test.
8 BellSouth's trigger analysis using LATA as the market definition is attached as
9 Exhibit PAT-11.

10

11 Q. IN THE OTHER STATE IMPAIRMENT PROCEEDINGS, CLECS HAVE
12 RECOMMENDED USING METROPOLITAN SERVING AREAS ("MSAs") AS
13 THE APPROPRIATE MARKET DEFINITION. WHAT IS THE OUTCOME OF
14 BELL SOUTH'S TRIGGER ANALYSIS IF MSA WAS THE MARKET
15 DEFINITION?

16

17 A. Using this definition would result in 3 markets satisfying the triggers test.
18 BellSouth's trigger analysis using MSA as the market definition is attached as
19 Exhibit PAT-12.

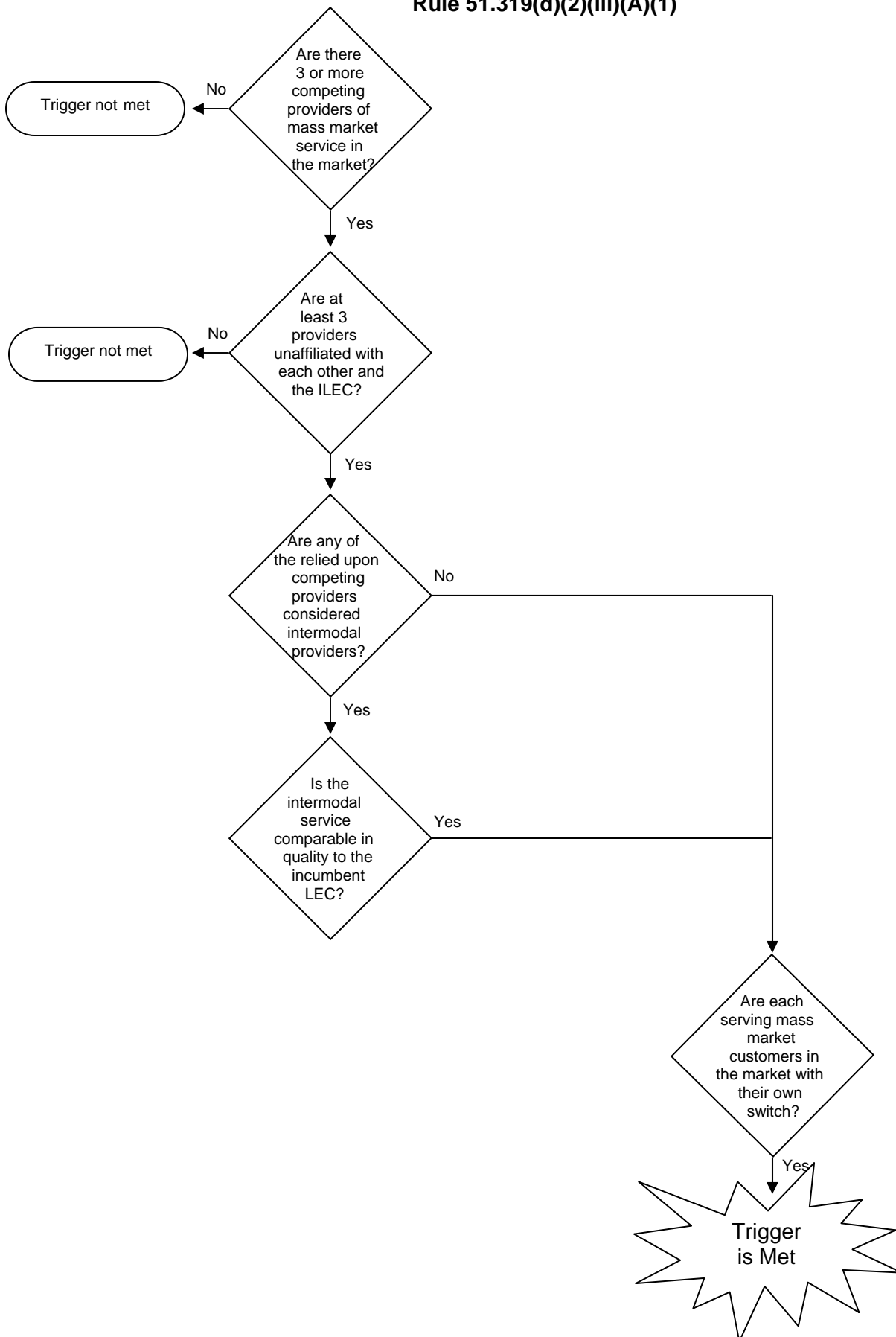
20

21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22

23 A. Yes.

**Decision Flow Chart to Determine if FCC Self-Provisioning Trigger is Met
Rule 51.319(d)(2)(iii)(A)(1)**



CLEC Switches Providing Qualifying Service in South Carolina

Confidential and Proprietary Information

Markets with 3 or More CLECs Self-Providing DS1 level Switching

MARKETS

Charleston-North Charleston SC Zone 1
Columbia SC Zone 1
Greenville-Spartanburg-Anderson SC-NC Zone 1

LATAs Where the Self-Provisioning Trigger is Met

<u>LATA</u>	<u>Market</u>
436	Charleston, SC
434	Columbia, SC
430	Greenville, SC

3 or more CLECs
Serving locations with 3 or less lines
Based on currently available data

MSAs Where the Self-Provisioning Trigger is Met

MSAs

Charleston

Columbia

Greenville

3 or more CLECs

Serving locations with 3 or less lines

Based on currently available data